

**GUERNSEY BAR EXAMINATION**

**13:00PM FRIDAY 17 MAY 2024**

**PAPER FOUR**

**FAMILY LAW**

**THREE HOURS**

**CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS. THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW.**

- **QUESTION 1 – 20 MARKS**
- **QUESTION 2 – 20 MARKS**
- **QUESTION 3 – 20 MARKS**
- **QUESTION 4 – 20 MARKS**
- **QUESTION 5 – 20 MARKS**

**MARKS WILL BE GIVEN FOR REFERENCES TO APPLICABLE LEGISLATION AND CASE LAW.**

**PLEASE ENSURE THAT THE FOLLOWING IS CLEARLY MARKED ON EACH PAGE OF YOUR ANSWER SCRIPT:**

- **NAME OF PAPER**
- **CANDIDATE LETTER**
- **QUESTION NUMBER**
- **PART NUMBER OF QUESTIONS (if applicable)**

**MATERIALS PROVIDED (all consolidated texts, where applicable):**

1. **The Children (Guernsey and Alderney) Law, 2008**
2. **The Family Proceedings (Guernsey and Alderney) Rules, 2009**

**Question 1.**

Clarice and John come to see you. They have been married for 30 years and have recently separated. They have no children. John has recently admitted to an affair with Clarice's sister that has been ongoing for more than a decade. Clarice is devastated and wishes to resolve the matrimonial finances immediately, without a petition being issued. John tells you that he feels terrible for what he has done to Clarice. He wants to put a binding agreement in place under which he will transfer the matrimonial home, and all of their savings to Clarice. This will leave John, who is 55, with an income of £50,000 per annum and a small pension plan. He is adamant that he wants to start afresh. Clarice has property that she inherited from her father, a pension and an income from her job as a teacher but she is too upset to "discuss her numbers" with you or John. John does not care and tells you that he wants everything sorted within a fortnight. Clarice is happy to agree.

- (i) In what circumstances can you advise both Clarice and John?  
**[1 mark]**
- (ii) What advice do you give John?  
**[7 marks]**
- (iii) Assuming that you remain instructed to achieve a "binding agreement", what steps would you take, what documentation will you need to prepare and what procedure would you follow?  
**[8 marks]**
- (iv) Imagine that a binding arrangement has been put in place. Four years after your meeting John visits your office again. He now feels that his agreement with Clarice was totally unfair and he wants some money back. Advise John.  
**[4 marks]**

## **Question 2.**

Angela and Bob are both 50 years of age. They have just obtained a divorce after 25 years of marriage. There are no children. When she met Bob, Angela was working as a shop assistant but she has not been employed outside the home for 20 years. Bob is a partner in a law firm. He earns (net) around £350,000 per annum. He has a capital account with a balance of £1 million, which Bob will be able to access when he retires. Bob also has an occupational pension with a cash equivalent transfer value of £2 million. The pension is a defined contribution pension, and when he is 55 Bob will be able to draw down 30% of the pension as a tax-free lump sum. Angela is still living in the jointly owned matrimonial home which has been valued at £3 million. She would like to stay in the home if at all possible. Shortly after they separated, Angela's father died. Angela knows that she will receive the inheritance within the next few months. Her inheritance will comprise:

- An oil painting of a distant and famous relative which has been in her family for many generations. It is difficult to value, but may be of interest to a specialist collector; and
- Cash of £2million.

You are advising Angela. Answer the following questions, setting out authority for your answers:

- (i) What approach will the Royal Court take when resolving Angela's financial claims for capital, and how are the assets likely to be divided between Angela and Bob? **[10 marks]**
- (ii) Angela would like to claim monthly maintenance from Bob. What order is the Court likely to make in respect of spousal maintenance, and why? **[4 marks]**
- (iii) If Angela wishes to proceed with an application for ancillary relief, what procedure will you follow? **[4 marks]**
- (iv) Angela instructs you that she does not want to disclose her inheritance in any discussions with Bob. She has not yet received the money and it is none of his business anyway. What do you do? **[2 marks]**

### **Question 3.**

Freda has been married to Joshua for five years and they have a six month old baby named Edward. They live together in rented accommodation. Unfortunately, the relationship has been a difficult one. Joshua has assaulted Freda on a number of occasions. He regularly shouts and swears at her. Last week, he slapped Freda hard around the face and said that he would kill her and Edward if she dared to leave him. He has taken Freda's front door key and is monitoring her mobile telephone. Joshua does not allow Freda to have access to money, other than the small amount of cash he gives her for housekeeping each week. Freda has managed to get away briefly to come and see you to take advice. She would like to leave Joshua and take Edward to live with her parents who live a short walk away from the family home.

- (i) What orders can you apply for to keep Freda safe? **[3 marks]**
- (ii) Draft the application to include the Order that you will ask the Court to make, and explain what procedure you will follow, what information the Court will require from Freda and in what form that information must be provided.

**[11 marks]**

- (iii) Two weeks later Freda contacts you. It is 4.30pm on Friday. There has just been a breach of the order. What do you do? **[6 marks]**

**Question 4.**

Jack and Jill have two children Barney (who is aged 11 and in year 6 at primary school) and Charles (aged 6). They have never been married and Jack's name does not appear on their birth certificates. Jack and Jill have never lived together, the children have lived with Jill but have seen Jack every day. The relationship has now come to an acrimonious end. Jack wants the children to live with him for half the time. Jill will not agree. She will not permit the children to stay with Jack overnight, citing his drinking and smoking habits. Barney is keen to live with Jack because of Jack's relaxed approach to homework and bedtime. Charles, who has a learning disability, finds change difficult and would prefer to be with his mother. He is currently refusing to see his father at all. Jack and Jill are no longer speaking and can't agree on which secondary school Barney should go to. Completely fed up, Jill told Jack last night that she plans to move to Dubai with the children any day now and that he will never see them again.

- (i) What advice would you give Jill, if instructed by her? **[10 marks]**
- (ii) What advice would you give Jack, if, instead of being instructed by Jill, he instructs you? **[10 marks]**

### **Question 5.**

Mitchell and Zoe are the parents of Alan (10 years) and Bobby (6 months). Mitchell has recently been released from prison, having served a 6 month sentence imposed by the Magistrate's Court for offences including cultivation of cannabis. Zoe has struggled with her mental health whilst Mitchell has been in prison. A neighbour has contacted the MASH and made a report that Mitchell is using drugs again, that he hits both Zoe and Alan, and that Alan and the baby are being neglected by Zoe who leaves them grubby and hungry. Mitchell and Zoe have received a letter from the Convenor talking about a referral and a meeting. They are not sure whether to go to the meeting and are scared about what may happen. They have heard rumours about the "CYCT". Mitchell and Zoe deny that the accusations that have been made against them are true.

(i) Advise Mitchell and Zoe.

**[10 marks]**

Jonny (aged 7) arrived at school this morning very upset. He told his teacher that his step father Todd hit him with a belt yesterday evening, and not for the first time. Jonny also told the teacher that Todd hits his mother Jodie, and that Jodie is powerless to do anything – partly because she is drunk or asleep most of the time. Jonny says that he is scared of his step father. The teacher knows that Jodie has suffered with poor mental health for some time, and she has noticed that Jodie is unkempt and smells of alcohol; she has scratches on her arms. The teacher immediately reports her concerns and a joint investigation is commenced by the police and the Committee for Health and Social Care. Further information emerges. Jodie has been supported by the Community Drug and Alcohol team in the past. Jodie insists that she is well, and that she never drinks to excess. She denies that there is any domestic abuse in the home. Jonny is very close to his paternal grandparents who live in a one bedroomed flat nearby. He has not seen his birth father for months. Jonny wants to live with his mum, but not with Todd, and he is worried that he may be 'taken away' and not see his mum ever again.

(ii) Advise the Committee for Health and Social Care as to their duties in this situation and what applications, if any, they should consider making.

**[7 marks]**

(iii) What steps can or should be taken and at what stage to ascertain the extent of Jodie's mental health difficulties, and the extent of her drinking?

**[3 marks]**